

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:

Information Proceeding to Develop
Recommendations for Amending the
Commission's Responsibilities and
Activities Related to Data Collection,
Analysis, and Dissemination

Docket 97-DC&CR-1

Proposed Amendments to the
Commission's Regulations Pertaining
to Data Collection and Disclosure of
Commission Records

**JOINT COMMENTS OF SOUTHERN CALIFORNIA EDISON
COMPANY, PACIFIC GAS & ELECTRIC COMPANY AND SAN
DIEGO GAS & ELECTRIC COMPANY TO STAFF'S DRAFT
CHANGES TO THE COMMISSION'S CONFIDENTIALITY
REGULATIONS.**

§ 2505. Designation of Confidential Records.

(a) No confidential record, or record which is ~~the subject of a pending application submitted in accordance with the terms of this section;~~ shall be disclosed except as provided by Section 2506 or 2507, unless disclosure is ordered by a court of competent jurisdiction.

(b) Application for Confidential Designation.

(1) Third Parties.

(A) Any private third party giving custody or ownership of a record to the Commission shall indicate any desire that it be designated a confidential record and not publicly disclosed but failure to so indicate at the time the record is submitted to the Commission is not a waiver of the right to request confidentiality later. An application for confidential designation shall:

(i) be on a sheet or sheets separate from but attached to the record;

(ii) specifically indicate those parts of the record which should be kept confidential;

(iii) state the length of time the record should be kept confidential, and provide justification for the length of time;

(iv) cite ~~and discuss~~ the provisions of the Public Records Act or other law which allow the Commission to keep the record confidential. ~~If the applicant believes that the record should not be disclosed because it contains trade secrets or its disclosure would otherwise cause loss of a competitive advantage, the application shall also state the specific nature of the advantage and how it would be lost, including the value of the information to the applicant, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;~~

(v) ~~state whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated with other information or masked, the application shall justify why it cannot;~~

(vi) ~~state whether and how the information is kept confidential by the applicant and whether it has ever been disclosed to a person other than an employee of the applicant, and if so under what circumstances;~~

(vii) contain the following certification executed by the person primarily responsible for preparing the application: "I certify under penalty of perjury that the information contained in this application for confidential designation is true, correct, and complete to the best of my knowledge." Where the applicant is a company firm, partnership, trust, corporation, or other business entity, or an organization, or association, the certification shall also state that the person preparing the request is authorized to make the application and certification on behalf of the entity, organization, or association.

(B) An improper or incomplete application shall be returned to the applicant with a statement of its defects. The record for which confidentiality was requested shall not be disclosed for 30 days after return of the application to allow a new application to be submitted.

(C) Executive Director's Determination.

(i) The Executive Director shall, after consulting with the General Counsel, determine if an application for confidential designation should be granted. An application shall be granted unless the applicant has failed to furnish the information required in paragraph B(1)(A) or to assert that some make any reasonable claim that the Public Records Act or other provision of law authorizes the Commission to keep the record confidential. The Executive Director or the General Counsel may, within fourteen days after receipt of an application, require the applicant to submit any missing additional information necessary to establish a confidential designation. rule on the application. If the missing additional information is not submitted within fourteen days of receipt of the notice of missing information request, the Executive Director may deny the application. The Executive Director's determination shall be in writing and shall be issued no later than thirty days after receipt of an application.

(ii) After a denial of an application, the information sought to be designated confidential shall not be available for inspection or copying for a period of 30 days, or, in the event that the applicant files an appeal with the Commission, within 30 days of the Commission decision on the appeal.

(iii) A confidential designation pursuant to this section shall remain in full force and effect except as provided in § 2506.

(D) Repeated Applications for Confidential Designation. If an applicant's prior application for confidential designation of substantially similar information has been granted pursuant to Section 2505, an application for confidential designation need contain only a certification, pursuant to Section 2505(a)(v), that the information submitted is substantially similar and that all facts and circumstances relevant to the granting or approval of the application are unchanged. Such an application shall be deemed granted ~~or approved, as the case may be.~~

[Note: The following section is designed to allow the Commission to designate as confidential categories of information submitted by third parties without requiring an application.]

(E) Automatic Designation. The following information submitted by a private third party shall be treated as confidential without an application for confidentiality:

(i)

(ii)

(iii)

(2) Other Public Entities. When another state or local agency possesses information pertinent to the responsibilities of the Commission that has been designated by that agency as confidential under the Public Records Act, the Commission may request and the agency may submit the information to the Commission without an application for confidential designation. The Commission shall treat such information as confidential unless disclosure is ordered by a court of competent jurisdiction.

(3) Commission Documents

(A) Information generated by Commission staff that is entitled to confidential treatment under the Public Records Act shall be treated as confidential without an application for confidential designation. Any private third

party or other public entity may request to inspect or copy such records by filing a petition pursuant to section 2506.

(B) Contracts

(i) Information that is submitted in a bid shall be treated as confidential prior to the notice of proposed award, and any successful bidder who wishes the Commission to treat any information contained in a bid as confidential shall file a request pursuant to subsection (a)(1) of this section within five days of the posting of the notice of proposed award of the bid.

(ii) When the terms of a contract between the Commission and a contractor specify that certain information that will be provided to the Commission under the terms of the contract is confidential, the Commission shall treat that information as confidential without an application for confidential designation.

Note: Authority cited: Section 25218(e), Public Resources Code; and Section 6253(a), Government Code. Reference: Sections 25223, 25321, and 25364, Public Resources Code.

' 2506.Request for Inspection or Copying of Confidential Records

(a) Form of Request. A request for inspection or copying of any confidential record, shall be a written petition to the Commission. It shall state the facts supporting a conclusion that the Commission should disclose the confidential record.

(b) Commission Decision.

(1) If the petition is for inspection or copying of a record received from a private third party, a person under contract to the Commission, or another government agency, the Executive Director shall, within one day of receipt of the petition, provide a copy of the petition to the person or entity that submitted the information and request, in writing, permission to release the record. Any party not wishing to give permission for the record's release shall, within five working days of the date on which the party/entity whose confidential information/records is requested actually receives notice of the petitioner's request, supplement the initial application by providing the following:

(i) A detailed discussion of the provisions of the Public Records Act or other law which allow the Commission to keep the record confidential. If the party believes that the record should not be disclosed because it contains trade

secrets or its disclosure would otherwise cause loss of a competitive advantage, the party shall state the specific nature of the advantage and how it would be lost, including the value of the information to the party, and the ease or difficulty with which the information could be legitimately acquired or duplicated by others;

(ii) a statement whether the information may be disclosed if it is aggregated with other information or masked to conceal certain portions, and if so the degree of aggregation or masking required. If the information cannot be disclosed even if aggregated with other information or masked, the party shall justify why it cannot;

(iii) any additional information supporting the party's claim for confidentiality.

_____ may supplement the initial application for confidential designation within five working days of the receipt of the request for permission.

(2) The Commission shall make an effort to issue a decision on the petition within ten days, and in no event beyond 20 days, -of its receipt. A decision that a record should be disclosed shall be effective ten days after issuance and shall not be subject to reconsideration. A decision that the record is exempt from disclosure shall be effective immediately and shall not be subject to reconsideration.

(c) List of Records Determined to be Confidential. The Executive Director shall maintain a list of records the Commission orders held confidential pursuant to Section 2506(be). Any petition for such information shall be deemed denied unless the petitioner alleges changed circumstances which require a reversal of the Commission's previous order. A petition for such information shall be returned to the petitioner with a copy of the Commission's previous order, a copy of these regulations, and an explanation of the requirement to show changed circumstances. An amended petition may be submitted.

§ 2507. Disclosure of Confidential Record.

(a) The Executive Director may disclose records determined to be confidential pursuant to Section 2505 or Section 2506 to:

(1) Commission employees whose Commission work requires inspection of the records.

(2) Persons under contract to the Commission whose work for the Commission requires inspection of the records and who agree in a contract to keep the records confidential.

(3) Other governmental bodies which have a need for the records related to their official functions and which agree to keep the records confidential and to disclose the records only to those employees whose agency work requires inspection of the records. On behalf of the Commission the Executive Director may request and agree to maintain the confidentiality of other agencies' confidential records.

(4) Any person, provided that the Executive Director has masked or aggregated the information to the point necessary to protect confidentiality, or provided that the applicant has otherwise consented in writing to the disclosure.

(b) The Executive Director shall advise the private third party to whom the confidential designation belongs of the disclosure to persons in subsections (2), (3), and (4) of this section of records determined confidential pursuant to Section 2505 or Section 2506.

NOTE: Authority cited: Section 25218(e), Public Resources Code and Section 6253(a), Government Code. Reference: Section 25223, Public Resources Code.